

DERRICK FULLER

IBLA 81-613

Decided July 8, 1981

Appeal from the decision of the Nevada State Office, Bureau of Land Management, dismissing a protest against simultaneous oil and gas lease drawing for parcel No. NV-5, N-32383.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Applications: Drawings

A simultaneous oil and gas lease offer is properly rejected if the drawing entry card is not received by the deadline specified in the notice announcing the filing period.

2. Oil and Gas Leases: Applications: Filing

A drawing entry card not received until after the close of the filing period is invalid even if the delay in delivery is the fault of the postal service.

APPEARANCES: Derrick Fuller, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Derrick Fuller has appealed from the April 23, 1981, decision of the Nevada State Office, Bureau of Land Management (BLM), dismissing his protest against the validity of BLM's March 26, 1981, simultaneous oil and gas drawing for parcel No. NV-5. The basis of appellant's protest was his contention that his application for parcel NV-5 should have been included in BLM's March drawing because he mailed it [from Detroit, Michigan] on Tuesday, March 17, 1981, and that it therefore should have been received by BLM's filing deadline of Friday, March 20, 1981. However, BLM's records show that appellant's drawing entry card

(DEC) was actually received and date stamped at 7:30 a.m. on March 23, 1981, the following Monday. BLM therefore returned appellant's \$10 postal money order and DEC to him with a note of explanation the following day, March 24.

Appellant promptly wrote back to BLM on March 28, 1981, demanding an explanation of the 6 days it had taken his DEC to reach BLM. That letter is not stamped as to date of receipt, and it apparently was not immediately answered. On March 30, however, appellant again wrote to BLM indicating his desire to protest the Nevada March drawing on the ground that first-class mail takes only 1 or 2 days to reach its destination and that since his DEC had taken 6 days, it must have been deliberately delayed. That letter, which was received by BLM on April 3, 1981, was treated as a formal protest, and BLM's April 23 decision was issued in response. At that point, appellant filed an appeal with this Board by letter mailed to BLM on Tuesday, April 28, and not received by it until Monday, May 4, 6 days later.

From the foregoing, it could be argued that normal mail time between Detroit, Michigan, and Reno, Nevada, is 4 days (March 24 to March 28, and March 30 to April 3) unless a weekend is involved. If a weekend is involved (March 17 to March 23, and April 28 to May 4), mail time is sometimes increased to 6 days. The point is made because appellant alleges in his statement of reasons before this Board that the fact that there were other important participants, including an oil company, in the Nevada March drawing provides "clear evidence" that his DEC was deliberately detained because of the valuable minerals to be found on the parcel in question.

On the contrary, the file contains no evidence of fraud or irregularity, and the mail times indicated by BLM's date stamps, whether reasonable or not, are certainly not inconsistent with experience, given the large size of the cities involved and their distance apart.

[1, 2] Absent evidence of impropriety, the Board has long held that a simultaneous oil and gas lease offer is properly rejected if the DEC is not received by the deadline specified in the notice announcing the filing period. See Robert B. Ferguson, 20 IBLA 299 (1975). The Department's simultaneous filing regulations specifically require this result. 43 CFR 3112.5(a)(2). A late drawing entry card is invalid even if the delay in delivery is the fault of the postal service.

Moreover, the Department's general procedural regulations provide that "filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing." 43 CFR 1821.2-2(f). The Board has generally held that the person choosing the means of delivery must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979); Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Nevada State Office is affirmed.

Bernard V. Parrette
Chief Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge